

Stamp and Return

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Request for Licensing Freezes and Petition for)
Rulemaking to Amend the Commission's DTV)
Table of Allocations to Prohibit the Future)
Licensing of Channel 51 Broadcast Stations and)
to Promote Voluntary Agreements to Relocate)
Broadcast Stations From Channel 51)

Docket No. **FILED/ACCEPTED**

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Federal Communications Commission
Office of the Secretary

**PETITION FOR RULEMAKING AND REQUEST FOR LICENSING FREEZES BY
CTIA – THE WIRELESS ASSOCIATION® AND RURAL CELLULAR ASSOCIATION**

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Pursuant to Section 1.401 of the Commission's rules,¹ CTIA – The Wireless Association® and the Rural Cellular Association ("Petitioners") urge the Commission to promote deployment of wireless broadband services in the Lower 700 MHz A Block ("A Block") by taking action to prevent further interference caused by TV broadcast stations on Channel 51. Specifically, in this Petition for Rulemaking and Request for Licensing Freezes ("Petition"), Petitioners requests that the Commission: (1) revise its rules to prohibit future licensing of TV broadcast stations on Channel 51, (2) implement freezes, effective immediately, on the acceptance, processing and grant of applications for new or modified broadcast facilities seeking to operate on Channel 51, and (3) accelerate clearance of Channel 51 where incumbent Channel 51 broadcasters reach voluntary agreements to relocate to an alternate channel.

The National Broadband Plan emphasized the deployment of additional spectrum for wireless broadband spectrum as a key policy objective of the Commission. While the 700 MHz spectrum in particular is ideally suited for innovative wireless broadband services, licensees in the A Block face technical challenges caused by the presence of broadcast TV services on

¹ 47 C.F.R. § 1.401.

Channel 51. By undertaking efforts to avoid aggravating interference from Channel 51, the Commission will help meet its spectrum policy goals with minimal disruption to broadcast operations. Petitioners do not ask the Commission to disturb existing operations on Channel 51. Rather, we urge the Commission to take action to prevent additional stations from commencing operation in this channel in the future and to accelerate clearance of the channel by broadcasters who voluntarily agree to do so. This action will provide 700 MHz A Block licensees with a clear picture of the interference environment in the band, and enable them to plan deployment of their networks.

I. INTRODUCTION AND SUMMARY

Petitioners urge the Commission to take action to promote use of the A Block spectrum for wireless broadband services. In a statement, Commissioner Baker correctly observed that Channel 51 interference “may foreclose the opportunity to build out a broadband offering in 700 MHz.”² Rather than allow the utility of this spectrum to be diminished by adjacent-channel interference, Petitioners urge the Commission to prevent further interference by (1) revising its rules to foreclose future licensing on Channel 51, (2) imposing immediate freezes on the acceptance, processing or grant of applications to operate on Channel 51, and (3) promoting through streamlined procedures voluntary efforts by incumbent Channel 51 broadcasters to relocate to other channels to avoid interference.

When the Commission reallocated TV Channels 52-69 to wireless broadband services, the Commission’s band plan reallocated TV Channel 52 to what is now known as a portion of

² *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, FCC 10-196, at Statement of Commissioner Meredith Attwell Baker (2010) (“*TV Spectrum Innovation NPRM*”).

the Lower 700 MHz A Block.³ As stated in more detail below, licensees of 700 MHz A Block spectrum have encountered significant technical challenges to deploying wireless broadband service in this spectrum, primarily owing to the fact that there is no guard band between Channel 51 and the A Block and that Channel 51 broadcast operations pose a substantial interference threat to mobile systems deployed in the A Block. The National Broadband Plan highlights the role of 700 MHz spectrum as a “foundation for the nation’s 4G wireless networks,”⁴ while also finding that “[t]he growth of wireless broadband will be constrained if government does not make spectrum available to enable network expansion and technology upgrades.”⁵ With the nation’s spectrum resources becoming increasingly strained, it is critical that the Commission’s policies enable the fullest and most efficient use of wireless broadband spectrum already licensed.

As stated further below, petitioners’ proposal is consistent with Commission precedent promoting interference-free operation by public safety and commercial wireless services in the 700 MHz band by prohibiting the licensing or operation of services that would cause interference to or inhibit the deployment of 700 MHz public safety and commercial wireless services. Indeed, in connection with these actions and in similar proceedings, the Commission also has taken the step of imposing a freeze on the acceptance and/or processing of new applications proposing operations in the affected bands.⁶ Petitioners urge the Commission to continue its

³ *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022, ¶ 77 (2001) (“*Channels 52-59 Reallocation Order*”).

⁴ Federal Communications Commission, *CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN*, at 78 (2010) (“*National Broadband Plan*”).

⁵ *Id.* at 77.

⁶ *See, e.g., Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, Report and Order and Further Notice of Proposed Rulemaking,

efforts to enable the deployment of innovative wireless services in the 700 MHz spectrum by taking the proposed actions to enable the interference-free use of A Block spectrum.

II. THE COMMISSION SHOULD REVISE ITS RULES TO FORECLOSE ADDITIONAL LICENSED OPERATIONS ON CHANNEL 51.

A. Broadcast Operations on TV Channel 51 Present Interference Challenges for 700 MHz Licensees and Are Constraining Broadband Deployment.

The Commission has repeatedly highlighted the fact that the characteristics of 700 MHz spectrum make it particularly well-suited for the provision of innovative wireless broadband services.⁷ Further, the National Broadband Plan stressed the importance of making more spectrum available for wireless broadband services. The current interference environment between Channel 51 and the A Block could be mitigated by the Commission's removal of Channel 51 from the DTV Table of Allotments and other rule revisions aimed at foreclosing the further licensing of broadcast stations on Channel 51.⁸ In light of the Commission's spectrum policy goals, such rule revisions are plainly in the public interest.

Under the Commission's current rules, A Block licensees face considerable obstacles to broadband deployment in the 700 MHz band. When the Commission reallocated Channels

25 FCC Rcd 643, at ¶¶ 36-37 (2010) (prohibiting the future operation of low power auxiliary station devices in the 700 MHz band as part of a "path to providing an interference-free environment for new services in the 700 MHz Band, especially public safety services that are used to protect safety of life, health, or property").

⁷ See, e.g., *id.* at ¶ 11 (highlighting the desirability of UHF spectrum for use by mobile wireless systems); *Channels 52-59 Reallocation Order* at ¶ 15 ("Based on the policy statements that found the 700 MHz band well suited to advanced services, we believe a fixed and mobile services allocation in this band can support the development of those advanced services, and that doing so will promote the public interest.").

⁸ For example, under Petitioners' proposed rule changes the DTV Table of Allotments would be revised to specify that petitions requesting the addition of a new allotment or a change in the channel of an initial allotment must specify a channel in the range of channels 2-50. See 47 C.F.R. § 73.622(a)(1)-(2). Petitioners would ask the Commission to propose and implement any rule changes necessary to remove Channel 51 as an option for future applicants for new licenses or for the change in the channel of a broadcast station.

52-69 to wireless broadband services, it adopted interference protection requirements that place particular strain on the A Block. Under the Commission's rules, A Block licensees must meet a minimum desired-signal to undesired-signal ratio within the service contour of a TV broadcaster.⁹ As a result of these requirements, and because the portion of the A Block adjacent to Channel 51 is being used for mobile transmissions, there is a possibility that mobile devices operating in close proximity to a TV receiver could potentially exceed the D/U protection ratio.¹⁰

While A Block licensees are constrained by the interference protection they must accord to Channel 51 operations,¹¹ the more significant interference problem is interference from TV 51 into A Block base station receivers that are attempting to receive low power mobile transmissions. Indeed, numerous A Block licensees and equipment manufacturers have commented on the risk of interference from Channel 51 broadcast operations to wireless broadband networks operating in the A Block. For example, Cellular South previously reported that it "has been warned consistently by various manufacturers of 700 MHz base station and subscriber equipment that Lower Block A operation is susceptible to disruptive interference from

⁹ See 47 C.F.R. § 27.60. See also Comments of Verizon Wireless, RM-11592, at 8-9 (Mar. 31, 2010) ("Verizon Wireless 700 MHz Equipment Comments").

¹⁰ See, e.g., Verizon Wireless 700 MHz Equipment Comments at 8-9 ("The presence of broadcast TV services on channel 51 (692-698 MHz) also presents technical challenges for Lower A Band licensees. In establishing its rules for 700 MHz, the Commission recognized the potential for mobile systems operating at 700 MHz to cause interference to a DTV receiver operating on channel 51. As a result, it established rules requiring that Lower A Block licensees meet a minimum desired signal-to undesired signal ratio ('D/U') within the service contour of the TV broadcaster. While this might be possible for fixed wireless services, it is likely to be difficult for mobile devices to provide such protection without significantly limiting where these devices can be used.").

¹¹ Comments of Motorola, Inc., RM-11592, at 5 (Mar. 31, 2010) ("The band class 12 transmission situation is further complicated by the desired signal to undesired signal ratio (D/U) requirements placed on lower 700 MHz A Block transmitters in order to protect TV broadcast operators in channel 51, and the potential for interference to lower 700 MHz A block operations caused by channel 51 transmissions.").

adjacent channel TV operations on Channel 51.”¹² And LG has cautioned that “resolving these [interference] issues may require substantial modification to device manufacture and network infrastructure plans, ultimately harming the speed and commercial viability of 700 MHz broadband deployments.”¹³

Further complicating the A Block interference picture is the fact that the Commission requires that A Block licensees accord the same level of interference protection to both current and future operations on Channel 51, even those commencing operation after the auction of 700 MHz licenses.¹⁴ In other words, it is possible for an A Block licensee to build out an extensive broadband network, only to later find the investment undermined—or completely negated—by a new Channel 51 licensee that the A Block network operator must protect. This fact creates a dangerous opportunity for those who would seek a Channel 51 license to exploit opportunities for personal gain at the expense of an A Block licensee that either built out a network or that was looking to build out rapidly in the same market. Further, the risk exposure inherent in A Block build-out may undermine investor confidence. Moreover, interference from TV broadcasting may damage the carrier’s reputation and goodwill among consumers, who may have coverage that is reduced as a result of a new Channel 51 licensee. The current interference environment in the A Block already significantly complicates the siting of base stations, even

¹² Comments of Cellular South, Inc., RM-11592, at 7-8 (Mar. 31, 2010) (“Cellular South 700 MHz Equipment Comments”).

¹³ Letter from Alan K. Tse, Vice President, General Counsel, LG Electronics MobileComm U.S.A., Inc. to Federal Communications Commission, RM-11592, at 3 (June 11, 2010) (“LG A Block Petition Letter”).

¹⁴ *Second Periodic Review Order* at ¶ 124.

without taking into account the uncertainty associated with protecting stations to be built in the future.¹⁵

The combination of more stringent interference protection criteria and susceptibility to interference from Channel 51 operations uniquely hinders A Block licensees, as compared to other 700 MHz licensees. A rule revision that prohibits new license applications and license modifications proposing operations on Channel 51 will prevent the interference problem from worsening and enable licensees to commence network buildout.

B. A Prohibition of Future Licensing of Channel 51 Broadcast Stations is Consistent With the Commission's Spectrum Policy Objectives and Precedents.

A key policy objective of the Commission over the past year has been the identification and allocation of additional spectrum for wireless broadband services. Numerous studies have affirmed the exploding use of and demand for wireless broadband services in the United States and the detrimental effects that will be felt if more spectrum is not allocated to satisfy this exponentially-increasing demand. Petitioners have been strong advocates for the identification of new spectrum for mobile broadband, but recognize that this is a lengthy process and that any spectrum identified now will take time to come to market. For this reason, it is critical that the Commission actively promote the fullest utilization of spectrum already licensed for wireless broadband services. By adoption of rules eliminating Channel 51 as an option for new

¹⁵ Letter from Joseph P. Marx, AT&T, RM-11592, at 6 ("Wireless Strategy ignores the fact that the next-generation 4G networks will require tens of thousands of base stations to provide national coverage, and that there are many Channel 51 and D-block and E-block transmitters already in place or planned, with many more likely as those services continue to develop and expand. Coordinating base station placement among so many providers and so many base stations would be a logistical nightmare even in a static environment. But in the real world, where providers are constantly adding and re-locating base stations to improve service and to provide additional services, such coordination is a practical impossibility. New or relocated base stations would trigger a series of other necessary new base stations or re-locations to avoid interference.").

broadcasters or those seeking to change channels, the Commission will provide A Block licenses with the certainty needed to build out their networks and facilitate the provision of innovative services to the public. And, as noted below, these actions are consistent with the Communications Act's interference prevention objectives and Commission precedent promoting interference-free operation in the 700 MHz band.¹⁶

There can be no doubt that the United States is facing a significant spectrum crunch, and that if "we don't act to update our spectrum policies for the 21st century, we're going to run into a wall – a spectrum crunch – that will stifle American innovation and economic growth and cost us the opportunity to lead the world in mobile communications."¹⁷ In a June 28, 2010, Presidential Memorandum, President Obama concluded that a "new era in global technology leadership will only happen if there is adequate spectrum available to support the forthcoming myriad of wireless devices, networks, and applications that can drive the new economy."¹⁸ A recent Commission technical paper found that mobile data traffic was projected to grow by a factor of five (from 2009 levels) by 2011, more than 20 times by 2013, and reaching 35 times

¹⁶ See *infra* at 26.

¹⁷ Julius Genachowski, Chairman, Federal Communications Commission, "Unleashing America's Invisible Infrastructure," remarks at the FCC Spectrum Summit (Oct. 21, 2010), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1021/DOC-302331A1.pdf.

¹⁸ Presidential Memorandum: Unleashing the Wireless Broadband Revolution (June 28, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution> (directing the Commission and the National Telecommunications and Information Administration to make available a total of 500 MHz of spectrum over the next ten years that would be suitable for mobile and fixed broadband use.).

2009 levels by 2014.¹⁹ As a result, the technical paper forecast that an additional 275 MHz of spectrum will be required to meet mobile data demand in 2014.²⁰

The Commission's National Broadband Plan recommended that the FCC "make 500 megahertz newly available for broadband use within the next 10 years, of which 300 megahertz between 225 MHz and 3.7 GHz should be made newly available for mobile use within five years."²¹ Consistent with this recommendation, the Commission has adopted a Report and Order with rules intended to "enable licensees to provide mobile broadband services in 25 megahertz of the WCS band"²² and initiated a proceeding to make Mobile Satellite Service spectrum available for terrestrial mobile broadband use.²³ Most recently, the Commission initiated a proceeding to repurpose a portion of the UHF and VHF frequency bands used for broadcast television and make it available for flexible use by fixed and mobile wireless communications services.²⁴

Petitioners urge the Commission not only to pursue additional spectrum for wireless broadband services, but also to take steps that will promote the rapid deployment of that spectrum already licensed for mobile broadband services. In those regions of the country where there is no existing Channel 51 broadcast licensee, adoption of rules eliminating Channel 51 as

¹⁹ FCC Staff Technical Paper, Mobile Broadband, The Benefits of Additional Spectrum at 9 (Oct. 2010), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1102/DOC-302324A1.pdf.

²⁰ *Id.* at 17.

²¹ *National Broadband Plan* at 84.

²² *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, Report and Order and Second Report and Order, 25 FCC Rcd 11710, at ¶ 1 (2010).

²³ *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, Notice of Proposed Rulemaking and Notice of Inquiry, 25 FCC Rcd 9481 (2010).

²⁴ *TV Spectrum Innovation NPRM*.

an option for new broadcasters or those seeking to change channels will provide needed certainty to A Block licensees. In those areas, A Block licensees may build out their networks without the risk that their investments will be undermined by new Channel 51 stations. Petitioners' proposal is therefore entirely consistent with the Commission's spectrum policy goals, and will facilitate the provision of services using this spectrum.

Petitioners note that when the Commission addressed its Channel 51 interference protection criteria in 2004, it stated that "we do not believe use of channel 51 for broadcast purposes should be restricted in order to protect operations on channel 52, even if those operations predate the commencement of operations on channel 51."²⁵ Petitioners believe, however, that this statement should not serve as a barrier to efforts to prevent future broadcast operations on Channel 51. First, as a matter of perspective, mobile broadband services effectively did not even exist in 2004. Second, the Commission's 2004 statement is antithetical to the Commission's more recently articulated policy in favor of enabling broadband deployment and making more spectrum available for wireless broadband services. Third, a significant record has developed demonstrating the interference threat to the A Block posed by Channel 51 broadcasting.²⁶ Finally, and as explained further below, Petitioners' proposed rules would have no impact on existing Channel 51 licensees, unless such licensees determine that relocating to a different channel via a voluntary agreement with a wireless licensee or licensees would serve its best interests. Such action is also consistent with the interference prevention objectives of the

²⁵ *Second Periodic Review Order* at ¶ 124.

²⁶ *See supra* at 4-7.

Communications Act and previous Commission precedent regarding services that interfere with 700 MHz public safety and commercial wireless services.²⁷

Participants in the wireless industry have supported action by the Commission to prevent future licensing of stations on Channel 51. For example, Verizon Wireless and Cellular South both have supported freezes on the acceptance, processing and grant of applications for Channel 51 and indicated that doing so would facilitate the deployment of mobile wireless services in the Lower 700 MHz spectrum bands.²⁸

Petitioners agree that “[i]f there is to be productive use of existing spectrum” – an essential outcome in light of the looming spectrum crunch – there is “an urgent need for action

²⁷ See 47 U.S.C. § 333 (“No person shall . . . cause interference to any radio communications of any station licensed or authorized by or under this Act or operated by the United States Government.”). While not perfectly analogous to the instant interference environment between Channels 51 and 52, the Commission has taken several actions to prohibit operations that would cause interference to or inhibit the deployment of public safety and commercial wireless services in the 700 MHz band. See, e.g., *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 643, at ¶¶ 36-37 (2010) (prohibiting the future operation of low power auxiliary station devices in the 700 MHz band as part of a “path to providing an interference-free environment for new services in the 700 MHz Band, especially public safety services that are used to protect safety of life, health, or property”); *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order, 25 FCC Rcd 13833, at ¶¶ 21-22 (2010) (proposing that low power television stations cease all operations in channels 52-69 by December 31, 2011, and stating the Commission’s belief that “the continued successful development of new commercial wireless and public safety facilities in the 700 MHz band will be facilitated by clearing all remaining analog and digital low power television stations from these channels by a date certain”).

²⁸ See Letter from Tamara Preiss, Verizon, RM-11592 (June 21, 2010) (“We discussed the technical challenges associated with deployment of mobile wireless services in the Lower 700 MHz spectrum bands, including the presence of broadcast TV services on channel 51 and the operation of high power broadcast services in the Lower E block. . . . We suggested that, as an initial step in addressing these technical issues, the Commission place a freeze on any additional authorizations for broadcast TV services in channel 51.”); Cellular South 700 MHz Equipment Comments at 8-9 (urging the Commission to place a temporary freeze on the acceptance of new Channel 51 TV applications while potential interference issues are studied and encouraging the Commission “to pursue a review of [channel sharing] opportunities with a goal of moving TV operations off all or a portion of Channel 51 in order to promote availability of high quality interference-free wireless broadband operations on adjacent Lower Block A spectrum”).

by the Commission to lower formidable barriers to efficient use of Lower Block A spectrum.”²⁹

The Commission can quickly take a major step toward this goal by prohibiting any additional licensees from operating on Channel 51 and providing A Block licensees with the certainty needed to begin network buildout in this band.

III. THE COMMISSION SHOULD IMPOSE IMMEDIATE FREEZES ON THE ACCEPTANCE, PROCESSING AND GRANT OF APPLICATIONS PROPOSING NEW OR MODIFIED BROADCAST STATIONS ON CHANNEL 51.

While the Commission considers revisions of its rules to eliminate Channel 51 as a future channel option for new or modified broadcast TV stations, in the interim it should implement freezes on the acceptance, processing and grant of applications for new stations on Channel 51 or requests by existing broadcast licensees to relocate their operations to Channel 51.³⁰ Petitioners’ proposed freezes are consistent with the Commission’s prior spectrum rulemaking proceedings, and past precedent clearly supports the Commission’s authority to adopt immediate freezes pending the outcome of rulemaking changes.

²⁹ Cellular South 700 MHz Equipment Comments at 8.

³⁰ While the proposed freezes would prohibit the filing of new applications proposing broadcasting on or relocating to Channel 51, Petitioners believe that any party with a pending application for Channel 51 operation at the time of the freezes should be given an opportunity to amend their applications to request an alternate channel assignment. Should the Commission act favorably on the Petition for Rulemaking, Petitioners ask that any party with a pending application at that time be required to request an alternate channel assignment and dismiss those applications that do not make this request within a specified period. Such action is consistent with the Commission’s authority to “hold applications in abeyance pending its decision on the substantive matters upon which public comment is sought” and “change its rules in a manner that affects the disposition of pending applications.” *Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 Bands, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, Memorandum Opinion and Order, 12 FCC Rcd 2910, 2915, at ¶ 10 (1997) (“39 GHz Freeze Order”).

A. The Commission Has Ample Authority to Impose Immediate Freezes While it Considers the Issues Raised by the Proposed Rulemaking.

The application freezes proposed by Petitioners are consistent with the Commission's approach to spectrum rulemaking proceedings, and the Commission has clear authority to implement these freezes in connection with this Petition. As the rulemaking proposed by Petitioners would remove Channel 51 as an option for broadcasters seeking to operate a new facility or change the channel assignment of an existing license, freezes pending the outcome of this proceeding are a logical step to ensure intervening events do not undermine the purpose of the rulemaking. By adopting the proposed freezes on the acceptance, processing and grant of applications, the Commission will facilitate and inform the proposed rulemaking effort.

As an initial matter, Petitioners' proposed application freezes are consistent with Commission actions in previous proceedings where a reallocation or change in licensing service was contemplated. For example, as the Commission prepared to develop a channel election and repacking process for assigning post-transition DTV channels, it instituted a freeze on the filing of various broadcast applications to promote stability in the television licensing environment leading up to the DTV channel election process.³¹ The Commission also placed a freeze on 39 GHz license applications during the pendency of a petition for rulemaking impacting the 39 GHz bands, finding that the rulemaking could be undermined if the Commission processed applications not in conformance with the requirements that may be developed in that

³¹ *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, 19 FCC Rcd 14810 (2004) ("This freeze is a necessary first step to ensure a stable television database prior to the commencement of the channel election process. Prohibiting the filing of new applications and petitions requesting new channels or service areas will allow broadcasters to evaluate stations' technical parameters and thereby facilitate channel elections and the creation of a new DTV Table of Allotments.").

proceeding.³² In numerous other instances, the Commission correctly found that where a change in license service rules or spectrum allocations was contemplated, it would serve the public interest to not accept and process applications for operation in such spectrum.³³ The Commission should make the same finding here, and determine that freezes on the acceptance, processing and grant of applications to broadcast on Channel 51 are necessary to promote stability in the face of the proposed rulemaking.

Further, the Commission has clear and ample authority to implement these application freezes immediately. The Commission has repeatedly found that a decision to institute application freezes is procedural in nature and therefore not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.³⁴ Specifically, the

³² *Petition for Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, Order, 11 FCC Rcd 1156, at ¶ 2 (1995) ("The increasing number of applications constitutes a burden on the Commission's scarce resources and may limit the impact of a Commission rulemaking in response to the petition because applications being filed and processed are not necessarily in conformance with application and technical requirements that may be developed for the 39 GHz bands if the rulemaking petition is granted. Consequently, we find that the public interest will be served by not accepting any further applications for licensing new 39 GHz frequency assignments, pending Commission action on the rulemaking petition.").

³³ *See, e.g., Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, First Report and Order, 11 FCC Rcd 16570, at ¶ 2 (1996) (noting that the FCC suspended acceptance of new paging applications in conjunction with a proposal to convert from site-by-site licensing of paging channels to licensing on a geographic area basis); *Implementation of Sections 3(n) and 332 of the Communications Act*, Third Report and Order, 9 FCC Rcd 7988, at ¶¶ 107-108 (1994) (suspending the acceptance of 800 MHz applications on the 280 SMR category channels because the Commission was proposing "fundamental changes" in the service areas and channel blocks for future licensees in the service); *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational, and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 18 FCC Rcd 6722, at ¶ 229 (2003) ("*ITFS/MMDS Order*") (instituting a freeze on the filing of certain ITFS applications on the basis that the Commission was "undertaking a comprehensive review of [ITFS] services" in the instant proceeding).

³⁴ *See, e.g., 39 GHz Freeze Order* at ¶ 10, citing *Kessler v. FCC*, 326 F.2d 673, 679-81 (D.C. Cir. 1963) ("With respect to the broad APA challenge to our decision to suspend processing of certain 39 GHz applications, it is well established that the Commission may initiate a freeze without prior notice and hearing when the purpose is, as here, 'the creation of conditions under which formal rulemaking proceedings can be held in an effective, efficient, and

Commission has found that it may initiate a freeze without public prior notice and hearing where the purpose of such a freeze is to create “conditions under which formal rulemaking proceedings can be held in an effective, efficient, and meaningful manner.”³⁵ That is clearly the case here. It would make little sense for the Commission to continue to accept and process applications to broadcast on Channel 51 during the pendency of a proceeding that would potentially result in the prohibition of accepting such applications. Indeed, such action would clearly undermine the purpose of the proposed rulemaking.³⁶ Conversely, the proposed freezes would help to inform the record developed in the corresponding rulemaking proceeding and enable the rules adopted to be truly effective.

B. The Proposed Freezes are Consistent With the Commission’s Other Ongoing Efforts in the 700 MHz Band and Prior Spectrum Rulemaking Proceedings.

The Commission is currently engaged in numerous efforts to facilitate the use of 700 MHz spectrum for wireless broadband use. As stated above, A Block licensees face the specter of actual and threatened interference as a result of the Commission’s current approach to licensing on Channels 51 and 52. Establishing freezes on the acceptance, processing and grant of applications, together with rapid favorable action on this Petition, will significantly assist A Block licensees by enabling them to plan and build out their networks in a manner that will ensure interference-free operation. The proposed freezes on applications to operate on

meaningful manner.’ Thus, the Commission may take temporary measures to hold applications in abeyance pending its decision on the substantive matters upon which public comment is sought.”).

³⁵ See *id.*

³⁶ See, e.g., *ITFS/MMDS Order* at ¶ 226 (finding that a freeze on the acceptance of various ITFS channels on the basis that the acceptance of such applications during the rulemaking might limit the effectiveness of the decisions made and standards developed in the rulemaking).

Channel 51 also are consistent with the Commission's other 700 MHz proceedings. The Commission is currently engaged in numerous efforts to clear the 700 MHz spectrum and enable the provision of wireless services in this band. Petitioners believe that the application freezes will promote the Commission's goals in these related proceedings and ultimately result in more effective and efficient use of the band.

The Commission's previous actions to prevent interference to the 700 MHz band support the implementation of application freezes. When the Commission was considering a prohibition on the operation of wireless microphones in the 700 MHz band, it imposed a freeze on the filing of new applications seeking to operate on any 700 MHz band frequency after the end of the DTV transition, imposed a freeze on granting any request for equipment authorization of low power auxiliary station devices that would operate in any 700 MHz band frequencies, and held in abeyance any pending license application or equipment authorization request involving operation of low power auxiliary devices on 700 MHz band frequencies after the conclusion of the DTV transition.³⁷ In that proceeding, the Commission correctly found that the acceptance and processing of future applications and equipment authorization requests would undermine its objectives in the wireless microphone proceeding: to make this spectrum effectively available to public safety and commercial licensees at the end of the DTV transition.³⁸

Further, and as noted above, in November 2010 the Commission adopted a Notice of Proposed Rulemaking (the "*TV Spectrum Innovation NPRM*") in which the Commission proposes to, among other things: (1) add new allocations for fixed and mobile services in the

³⁷ *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, Notice of Proposed Rulemaking and Order, 23 FCC Rcd 13106, at ¶ 3 (2008).

³⁸ *Id.* at ¶¶ 1, 23-24.

UHF/VHF Bands to be co-primary with the existing broadcasting allocation in those bands, and (2) establish a framework permitting two or more television stations to share a single six-megahertz channel.³⁹ In making its proposals, the Commission acknowledges that channel-sharing has the potential to uniquely impact Channel 51 and wireless broadband networks operating immediately adjacent to Channel 51.⁴⁰ This rulemaking, which is aimed at making UHF spectrum available for wireless broadband services,⁴¹ has the potential to dramatically alter existing rules for UHF spectrum, and is consistent with the Commission's ongoing efforts to clear the 700 MHz band and to make more spectrum available for wireless broadband services. Indeed, this proceeding represents a significant opportunity to undertake a broader examination of the Channel 51 interference issue and take up Commissioner Baker's plea to "address existing impediments to investment like the channel 51 issue in an equitable and expedited manner."⁴²

Consistent with the Commission's efforts in the 700 MHz band, the Commission also has determined to implement a freeze on new analog LPTV and TV translator facilities and applications for new or modified analog or digital LPTV stations on channels 52-69.⁴³ The

³⁹ *TV Spectrum Innovation NPRM* at ¶ 2.

⁴⁰ See *id.* at ¶ 15 ("In allowing stations to share channels, we note that in some instances changes in the operation of television stations could raise the possibility of interference to radioastronomy operations on channel 37 or to services operating on frequencies immediately above channel 51. It is our intent that any channel or other facilities changes that might be requested as part of sharing agreements not result in increased interference to radioastronomy operations on channel 37 or to operations of other services above channel 51. We request comments on specific steps that could be taken as part of the implementation of our sharing rules to mitigate the potential for such interference.").

⁴¹ *Id.* at ¶ 11.

⁴² *TV Spectrum Innovation NPRM* at Statement of Commissioner Meredith Attwell Baker.

⁴³ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order, 25 FCC Rcd 13833, at ¶ 26 (2010).

Media Bureau had also previously announced that it would postpone the initiation of a nationwide first-come, first-served licensing process for digital LPTV and TV translator stations, correctly finding that this action would “permit the Commission to evaluate its reallocation and repacking proposals and their impact on future licensing of low power television facilities.”⁴⁴ Next, in October 2010, the Media Bureau announced a freeze on the filing of applications for new digital LPTV and TV translator stations in rural areas.⁴⁵ These efforts will help to inform the record developed in response to the *TV Spectrum Innovation NPRM*.

Just as the Commission’s application freezes with regard to LPTV will facilitate its *TV Spectrum Innovation NPRM* proceeding, freezes on the acceptance, processing and grant of TV Channel 51 applications will further aid the Commission as it considers the important issues raised by the *TV Spectrum Innovation NPRM*. Such freezes are clearly consistent with the Commission’s general approach to the 700 MHz spectrum: the Commission is considering many complicated issues with regard to these channels, and the application freezes will permit the Commission to evaluate the impact of its proposals on TV broadcast spectrum licensing generally. Indeed, the freezes will promote an effective rulemaking effort in that proceeding, particularly in light of the *TV Spectrum Innovation NPRM*’s stated goals of enabling wireless broadband deployment in TV spectrum while preventing interference to frequencies immediately above Channel 51. While the scope of the *TV Spectrum Innovation NPRM* extends beyond Channel 51, Channel 51 is uniquely situated for quick action by the Commission. The Commission can greatly ease the interference threat created by Channel 51 operations through

⁴⁴ *Initiation of a Nationwide, First-Come, First-Served Digital Licensing for Low Power Television and TV Translator Services Postponed Until Further Notice*, Public Notice, DA 10-1168 (June 28, 2010).

⁴⁵ *Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, Public Notice, DA 10-2070 (Oct. 28, 2010).

adoption of the freezes as proposed by Petitioners, and by acting favorably on the Petition for Rulemaking.

IV. THE COMMISSION SHOULD ACCELERATE CLEARANCE OF CHANNEL 51 INCUMBENT BROADCAST OPERATORS WHERE THEY REACH VOLUNTARY AGREEMENTS WITH WIRELESS LICENSEES.

In addition to adopting rules preventing additional broadcasters from operating on Channel 51, the Commission should facilitate voluntary efforts to clear Channel 51 of existing broadcast licensees. Specifically, Petitioners urge the Commission to adopt accelerated procedures for relocating a broadcast television station to a new channel where a Channel 51 licensee has reached a voluntary agreement with an A Block licensee or licensees to relocate. Agreements to clear this band are already underway,⁴⁶ and by expediting existing processes for channel reassignment or license modification, the Commission will promote deployment of wireless broadband service in the A Block and enable Channel 51 licensees to quickly implement alternative arrangements.

Under the Commission's existing framework for channel reassignment, a broadcast licensee must file a Petition for Rulemaking seeking to modify the TV channels allotted to a community under the Commission's DTV Table of Allotments.⁴⁷ The Media Bureau then will issue a Notice of Proposed Rulemaking seeking comment,⁴⁸ after which it will issue an Order

⁴⁶ See Cellular South 700 MHz Equipment Comments at 8 ("To guard against this [interference] problem and predictable customer dissatisfaction with future broadband service offerings Cellular South retained a consulting engineer to identify Channel 51 licensees in the vicinity of Lower Block A markets licensed to Cellular South so that efforts could be made to eliminate the interference problem. One Channel 51 licensee accepted Cellular South's offer to fund the cost of changing to another television channel and two other Channel 51 licensees have been approached by Cellular South and are considering similar proposals.").

⁴⁷ 47 C.F.R. § 73.622(a).

⁴⁸ See, e.g., *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Huntsville, Alabama)*, Notice of Proposed Rulemaking, DA 10-2000 (Oct. 19, 2010).

amending the Table of Allotments if the Bureau finds that doing so will serve the public interest.⁴⁹ Once the Table is amended, the licensee requesting the new channel is given a deadline by which it must file a minor change application for a construction permit on FCC Form 301.⁵⁰ Generally, the time between the filing of a Petition for Rulemaking and the issuance of an Order amending the Table of Allotments ranges from three to six months.⁵¹

Petitioners propose that the Commission adopt an expedited process for channel reassignment in cases where a Channel 51 licensee and a 700 MHz Block licensee (or licensees) reach a voluntary agreement to relocate the Channel 51 broadcaster to a new channel. In so doing, the Commission could establish a framework similar to that developed in 2000, where the Commission agreed to consider agreements between new 700 MHz licensees and licensees of incumbent television stations that would compensate incumbents for converting to DTV-only transmission prior to the DTV transition. Indeed, the Commission found that “voluntary agreements between incumbent broadcast licensees and new 700 MHz licensees, if properly

⁴⁹ See, e.g., *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Anchorage, Alaska)*, Report and Order, 25 FCC Rcd 159 (2010) (“Anchorage Order”); *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Beaumont, Texas)*, Report and Order, 25 FCC Rcd 3579 (2010) (“Beaumont Order”).

⁵⁰ Anchorage Order at ¶ 6; Beaumont Order at ¶ 6.

⁵¹ For example, Ketchikan TV, LLC’s Petition for Rulemaking was filed on October 27, 2009, the NPRM was issued on November 25, 2009, and the Order was released January 11, 2010. Petition for Rulemaking of Ketchikan TV, LLC, MB Docket No. 09-210 (filed Oct. 27, 2009); Anchorage Order at n. 1. Freedom Broadcasting of Texas Licensee, L.L.C.’s Petition for Rulemaking was filed on January 20, 2010, the NPRM was issued on February 24, 2010, and the Order was released April 7, 2010. Petition for Rulemaking of Freedom Broadcasting of Texas Licensee, L.L.C., MB Docket No. 10-49 (filed Jan. 20, 2010); Beaumont Order at n. 1. Griffin Licensing’s Petition for Rulemaking was filed on December 2, 2009, the NPRM was issued on January 21, 2010, and the Order was released March 9, 2010. Petition for Rulemaking of Griffin Licensing, L.L.C., MB Docket No. 10-19 (filed Dec. 2, 2009); *Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Oklahoma City, OK)*, Report and Order, 25 FCC Rcd 2276, at n. 1 (2010).

structured, will further the broad public interest in intensive and efficient use of the radio spectrum.”⁵² The Commission should reach the same conclusion here.

When it agreed to consider voluntary agreements to undertake early DTV transitions in 2000, the Commission established a presumption favoring grant of such requests in certain circumstances. Such a framework, when applied to relocation of Channel 51 licensees, would alleviate interference to 700 MHz licensees and promote more rapid deployment of broadband services in the band. Specifically, in its 2000 DTV Order, the Commission stated that:

[W]e will initially presume that the public interest is substantially furthered when an applicant demonstrates that the grant of its request will both result in certain specific benefits and avoid specific detriments. We would recognize such a presumption favoring grant of any requests that: (1) would make new or expanded wireless service, such as ‘2.5’ or ‘3G’ services, available to consumers; (2) would clear commercial frequencies that enable provision of public safety services; or (3) would result in the provision of wireless service to rural or other underserved communities. The applicant would also need to show that grant of the request would not result in any one of the following: (1) the loss of any of the four stations in the designated market area (DMA) with the largest audience share; (2) the loss of the sole service licensed to the local community; or (3) the loss of a community’s sole service on a channel reserved for noncommercial educational broadcast service.⁵³

The Commission further found that in cases where the presumption did not apply, it would consider all relevant public interest factors regarding the provision of wireless service, acceleration of the DTV transition, and the loss of broadcast service.⁵⁴

⁵² Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 20845, at ¶ 53 (2000) (“*2000 700 MHz Order*”).

⁵³ *Id.* at ¶ 61.

⁵⁴ *Id.* at ¶ 62.

Just as the Commission favored voluntary agreements in the context of early DTV conversions, it should favor voluntary agreements to relocate a TV broadcaster off of Channel 51. These agreements, in connection with a Commission order prohibiting future broadcast licensing on Channel 51, would clearly enable the provision of expanded advanced wireless services. A Block licensee would be assured of operation without interference from new Channel 51 licensees and could work to quickly clear incumbent broadcasters, resulting in an environment where they could invest in earnest in building out their networks. Further, the Commission's rules already require that requests for an alternate channel assignment comply with various Commission requirements regarding community coverage, interference protection, and geographic spacing.⁵⁵ In other words, a request from a broadcaster to relocate from Channel 51 to another channel, when filed in accordance with Commission rules and pursuant to a voluntary agreement, would meet the Commission's public interest standard for a regular channel reassignment, with the additional benefit of accelerating broadband deployment.

Petitioners note that the Commission has made certain channel changes effective immediately upon publication in the Federal Register pursuant to its authority under Section 553(d)(3) of the Administrative Procedure Act.⁵⁶ Using this authority to make effective changes in allocation that relocate broadcasters off of Channel 51 is just one method by which the Commission can expedite this process and enable rapid clearing of Channel 51 by broadcasters who voluntarily agree to do so.

⁵⁵ See 47 C.F.R. § 73.623.

⁵⁶ For example, in January 2010 the Commission made the request of Ketchikan TV, LLC to change channels effective immediately upon Federal Register publication to ensure that the TV station would meet its digital construction deadline of February 17, 2010. See Anchorage Order at ¶ 4.

Because all such channel changes will be voluntarily agreed to and negotiated by incumbent broadcasters, the Commission can be assured that any broadcaster making such a request is doing so because it believes that the channel reassignment is to its benefit. Petitioners therefore encourage the Commission to use all of the regulatory tools available to it to accelerate processing of changes to the DTV Table of Allotments, as rapid action in this context will promote numerous Commission policy objectives.

V. CONCLUSION

In light of the significant spectrum crunch and the exponentially-increasing demand for mobile broadband services in the United States, consumers cannot afford to have the use of licensed wireless broadband spectrum prevented by the threat of future harmful interference. Petitioners urge the Commission to commence a proceeding aimed at ensuring that the interference threat from additional Channel 51 broadcasters does not further complicate the A Block buildout. By commencing this rulemaking and (1) revising its rules to prohibit future licensing of TV broadcast stations on Channel 51, (2) implementing freezes on the acceptance, processing and grant of applications for new or modified broadcast facilities seeking to operate on Channel 51, and (3) accelerating clearance of Channel 51 where incumbent Channel 51 broadcasters reach voluntary agreements to relocate to an alternate channel, the Commission will

help to meet the National Broadband Plan's spectrum goals and will facilitate the continued deployment of advanced wireless broadband networks to the public.

Respectfully submitted,

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